

CHAPTER 6

(House Bill 361)

AN ACT concerning

Protection of Homeowners in Foreclosure – Prohibition on Foreclosure Rescue Transactions – Enforcement

FOR the purpose of altering the applicability of certain provisions relating to the protection of homeowners in foreclosure; altering the contents of a certain foreclosure consulting contract; prohibiting a foreclosure consultant from engaging in or arranging a foreclosure rescue transaction or receiving a commission or money under certain circumstances; requiring a foreclosure consultant to be licensed as a real estate broker and to provide certain research to a homeowner under certain circumstances; repealing certain provisions concerning foreclosure reconveyances; authorizing a homeowner to ~~cancel~~ rescind a contract for the sale or transfer of a residence in default under certain circumstances; requiring a contract for the sale or transfer of a residence in default to contain certain notices and attachments under certain circumstances; imposing certain prohibitions on a purchaser of a residence in default; authorizing the Commissioner of Financial Regulation to enforce certain provisions concerning the protection of homeowners in foreclosure; making a violation of this Act an unfair or deceptive trade practice under the Maryland Consumer Protection Act; requiring the Attorney General or the State's Attorney to notify the Commissioner of certain convictions; altering and defining certain terms; making stylistic and conforming changes; making this Act an emergency measure; and generally relating to the protection of homeowners in foreclosure.

BY repealing and reenacting, with amendments,
Article – Commercial Law
Section 13–301(14)(xxii)
Annotated Code of Maryland
(2005 Replacement Volume and 2007 Supplement)

BY adding to
Article – Commercial Law
Section 13–301(14)(xxiv)
Annotated Code of Maryland
(2005 Replacement Volume and 2007 Supplement)

BY repealing and reenacting, with amendments,
Article – Real Property

Section 7-301 to be under the amended subtitle "Subtitle 3. Protection of Homeowners in Foreclosure Act", 7-302, 7-305, 7-306, and 7-307; and 7-310 to be under the amended part "Part III. Sales or Transfers of Residences in Default", 7-311, 7-314, 7-315, 7-319, and 7-320

Annotated Code of Maryland
(2003 Replacement Volume and 2007 Supplement)

BY adding to

Article – Real Property

Section 7-308, 7-309, 7-310, 7-313, 7-318.1, and 7-322; and 7-325 to be under the new part "Part VI. Short Title"

Annotated Code of Maryland
(2003 Replacement Volume and 2007 Supplement)

BY repealing and reenacting, without amendments,

Article – Real Property

Section 7-318 and 7-321

Annotated Code of Maryland
(2003 Replacement Volume and 2007 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Commercial Law

13-301.

Unfair or deceptive trade practices include any:

(14) Violation of a provision of:

(xxii) Section 14-1319 or § 14-1320 of this article; [or]

(XXIV) TITLE 7, SUBTITLE 3 OF THE REAL PROPERTY ARTICLE, THE PROTECTION OF HOMEOWNERS IN FORECLOSURE ACT; OR

Article – Real Property

Subtitle 3. Protection of Homeowners in Foreclosure **ACT**.

7-301.

(a) In this subtitle the following words have the meanings indicated.

(B) "COMMISSIONER" MEANS THE COMMISSIONER OF FINANCIAL REGULATION IN THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION.

[(b)] (C) “Foreclosure consultant” means a person who:

(1) Solicits or contacts a homeowner in writing, in person, or through any electronic or telecommunications medium and directly or indirectly makes a representation or offer to perform any service that the person represents will:

(i) Stop, enjoin, delay, void, set aside, annul, stay, or postpone a foreclosure sale;

(ii) Obtain forbearance from any servicer, beneficiary or mortgagee;

(iii) Assist the homeowner to exercise a right of reinstatement provided in the loan documents or to refinance a loan that is in foreclosure and for which notice of foreclosure proceedings has been published;

(iv) Obtain an extension of the period within which the homeowner may reinstate the homeowner’s obligation or extend the deadline to object to a ratification;

(v) Obtain a waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a residence in [foreclosure] **DEFAULT** or contained in the mortgage;

(vi) Assist the homeowner to obtain a loan or advance of funds;

(vii) Avoid or ameliorate the impairment of the homeowner’s credit resulting from the filing of an order to docket or a petition to foreclose or the conduct of a foreclosure sale;

(viii) Save the homeowner’s residence from foreclosure;

(ix) Purchase or obtain an option to purchase the homeowner’s residence within 20 days of an advertised or docketed foreclosure sale; **OR**

(x) Arrange for the homeowner to become a lessee or renter entitled to continue to reside in the homeowner’s residence **AFTER A SALE OR TRANSFER**;

[(xi) Arrange for the homeowner to have an option to repurchase the homeowner’s residence; or

(xii) Engage in any documentation, grant, conveyance, sale, lease, trust, or gift by which the homeowner clogs the homeowner’s equity of redemption in the homeowner’s residence;] or

(2) Systematically contacts owners of [property that court records or newspaper advertisements show are in foreclosure or in danger of foreclosure] **RESIDENCES IN DEFAULT TO OFFER FORECLOSURE CONSULTING SERVICES.**

[(c)] (D) “Foreclosure consulting contract” means a written, oral, or equitable agreement between a foreclosure consultant and a homeowner for the provision of any foreclosure consulting service [or foreclosure reconveyance].

[(d)] (E) “Foreclosure consulting service” includes:

(1) Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in [foreclosure] **DEFAULT**;

(2) Contacting creditors on behalf of a homeowner;

(3) Arranging or attempting to arrange for an extension of the period within which a homeowner may cure the homeowner’s default and reinstate the homeowner’s obligation;

(4) Arranging or attempting to arrange for any delay or postponement of the sale of a residence in [foreclosure] **DEFAULT**;

(5) Arranging or facilitating the purchase of a homeowner’s equity of redemption or legal or equitable title [within 20 days of an advertised or docketed foreclosure sale];

(6) [Arranging or facilitating any transaction through which a homeowner will become a lessee, optionee, life tenant, partial homeowner, or vested or contingent remainderman of the homeowner’s residence;

(7)] Arranging or facilitating the sale of a homeowner’s residence or the transfer of legal title, in any form, to another party as an alternative to foreclosure; **OR**

[(8) Arranging for a homeowner to have an option to repurchase the homeowner’s residence after a sale or transfer;

(9)] (7) Arranging for or facilitating a homeowner remaining in the homeowner’s residence **AFTER A SALE OR TRANSFER** as a tenant, renter, or lessee **UNDER TERMS PROVIDED IN A WRITTEN LEASE**]; or

(10) Arranging or facilitating any other grant, conveyance, sale, lease, trust, or gift by which a homeowner clogs the homeowner’s equity of redemption in the homeowner’s residence].

[(e) “Foreclosure purchaser” means a person who acquires title or possession of a deed or other document to a residence in foreclosure as a result of a foreclosure reconveyance.

(f) “Foreclosure reconveyance” means a transaction involving:

(1) The transfer of title to real property by a homeowner during or incident to a proposed foreclosure proceeding, either by transfer of interest from the homeowner to another party or by creation of a mortgage, trust, or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain legal or equitable title to all or part of the property; and

(2) The subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the homeowner by the acquirer or a person acting in participation with the acquirer that allows the homeowner to possess the real property following the completion of the foreclosure proceeding, including an interest in a contract for deed, purchase agreement, land installment sale, contract for sale, option to purchase, lease, trust, or other contractual arrangement.]

(F) “FORECLOSURE RESCUE TRANSACTION” MEANS A TRANSACTION:

(1) IN WHICH A RESIDENCE IN DEFAULT IS CONVEYED BY A HOMEOWNER WHO RETAINS A LEGAL OR EQUITABLE INTEREST IN ALL OR PART OF THE PROPERTY, INCLUDING AN INTEREST UNDER A LEASE–PURCHASE AGREEMENT, AN OPTION TO REACQUIRE THE PROPERTY, OR ANY OTHER LEGAL OR EQUITABLE INTEREST IN THE PROPERTY CONVEYED; AND

(2) THAT IS DESIGNED OR INTENDED BY THE PARTIES TO PREVENT OR DELAY ACTUAL OR ANTICIPATED FORECLOSURE PROCEEDINGS AGAINST THE RESIDENCE IN DEFAULT.

(g) “Foreclosure surplus acquisition” means a transaction involving the transfer, sale, or assignment of the surplus remaining and due the homeowner based on the audit account during a foreclosure proceeding.

(h) (1) “Foreclosure surplus purchaser” means a person who acts as the acquirer by assignment, purchase, grant, or conveyance of the surplus resulting from a foreclosure sale.

(2) “Foreclosure surplus purchaser” includes a person who acts in joint venture or joint enterprise with one or more acquirers.

(i) “Homeowner” means the record owner of a residence in **DEFAULT OR A RESIDENCE IN** foreclosure, or an individual occupying the residence under a use and

possession order issued under Title 8, Subtitle 2 of the Family Law Article[, at the time an order to docket or a petition to foreclose is filed].

(J) “RESIDENCE IN DEFAULT” MEANS RESIDENTIAL REAL PROPERTY LOCATED IN THE STATE CONSISTING OF NOT MORE THAN FOUR SINGLE FAMILY DWELLING UNITS, ONE OF WHICH IS OCCUPIED BY THE OWNER, OR THE OWNER’S SPOUSE OR FORMER SPOUSE UNDER A USE AND POSSESSION ORDER ISSUED UNDER TITLE 8, SUBTITLE 2 OF THE FAMILY LAW ARTICLE, AS THE INDIVIDUAL’S PRINCIPAL PLACE OF RESIDENCE, AND ON WHICH THE MORTGAGE IS AT LEAST ~~30~~ 60 DAYS IN DEFAULT.

~~[(j)]~~ **(K)** “Residence in foreclosure” means residential real property **LOCATED IN THE STATE** consisting of not more than four single family dwelling units, one of which is occupied by the owner, or the owner’s spouse or former spouse under a use and possession order issued under Title 8, Subtitle 2 of the Family Law Article, as the individual’s principal place of residence, and against which an order to docket or a petition to foreclose has been filed.

(L) “SETTLEMENT” MEANS AN IN-PERSON, FACE-TO-FACE MEETING WITH THE HOMEOWNER TO COMPLETE FINAL DOCUMENTS INCIDENT TO THE SALE OR TRANSFER OF REAL PROPERTY OR THE CREATION OF A MORTGAGE OR EQUITABLE INTEREST IN REAL PROPERTY, CONDUCTED BY A SETTLEMENT AGENT, DURING WHICH THE HOMEOWNER MUST BE PRESENTED WITH A COMPLETED COPY OF THE HUD-1 SETTLEMENT FORM.

7-302.

(a) Except as provided in subsection (b) of this section, this subtitle does not apply to:

(1) An individual admitted to practice law in the State, while performing any activity related to the individual’s regular practice of law in the State;

(2) ~~¶~~ A person who holds or ~~is owed an obligation~~ **SERVICES A MORTGAGE LOAN** secured by a ~~lien on any~~ residence in foreclosure **DEFAULT** while the person performs ~~services in connection with the obligation or lien, if the obligation or lien~~ **SERVICING, COLLECTION, AND LOSS MITIGATION ACTIVITIES IN REGARD TO THAT MORTGAGE LOAN, PROVIDED THE MORTGAGE LOAN** did not arise as a result of a foreclosure ~~reconveyance~~ **CONSULTING CONTRACT**;

~~(3)¶~~ (i) A person doing business under any law of this State or the United States regulating banks, trust companies, savings and loan associations, credit unions, or insurance companies, while the person performs services as a part of the person’s normal business activities; and

(ii) Any subsidiary, affiliate, or agent of a person described in item (i) of this item, while the subsidiary, affiliate, or agent performs services as a part of the subsidiary's, affiliate's, or agent's normal business activities;

~~[(4)] (3)~~ A judgment creditor of the homeowner, if the judgment creditor's claim accrued before the written notice of foreclosure sale required under § 7-105(b) of this title is sent;

[(5)] A title insurer authorized to conduct business in the State, while performing title insurance and settlement services;

(6) A title insurance producer licensed in the State, while performing services in accordance with the person's license;]

~~(7)~~ (5) A person licensed as a ~~mortgage broker or~~ mortgage lender under Title 11, Subtitle 5 of the Financial Institutions Article while ~~acting~~;

(I) ACTING under the authority of that license; LICENSE IN REGARD TO A RESIDENCE IN DEFAULT; AND

(II) ARRANGING FOR A REFINANCING OF A MORTGAGE LOAN FOR THE RESIDENCE IN DEFAULT;

~~(8)~~ (6) A person licensed as a real estate broker, associate real estate broker, or real estate salesperson under Title 17 of the Business Occupations and Professions Article, ~~while the person engages in any activity for which the person is licensed under those provisions so long as any conveyance or transfer of deed, title, or establishment of equitable interest is done through a settlement as defined in § 7-311(a)(5) of this subtitle;~~ or ONLY:

(I) WHILE THE PERSON:

1. ENGAGES IN ANY ACTIVITY FOR WHICH THE PERSON IS LICENSED UNDER TITLE 17 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE; AND

2. DOES NOT VIOLATE ANY PROVISION OF § 7-307 OF THIS SUBTITLE OR TITLE 17 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE; AND

(II) IF THE RESIDENCE IN DEFAULT FOR WHICH THE PERSON IS CONDUCTING A LICENSED ACTIVITY:

1. IS LISTED IN THE LOCAL MULTIPLE LISTING SERVICE; AND

2. IS SOLD OR TRANSFERRED THROUGH A SETTLEMENT, INCLUDING THE CONVEYANCE OR TRANSFER OF DEED, TITLE, OR ESTABLISHMENT OF EQUITABLE INTEREST; OR

[(9)] ~~(4)~~ (7) A nonprofit organization that solely offers counseling or advice to homeowners in foreclosure or loan default, if the organization is not directly or indirectly related to and does not contract for services with for-profit lenders ~~or foreclosure purchasers~~.

(b) This subtitle does apply to an individual who:

(1) Is functioning in a position listed under subsection (a) of this section; and

(2) Is engaging in activities or providing services designed or intended to transfer title to a residence in [foreclosure] **DEFAULT** directly or indirectly to that individual, **A RELATIVE OF THAT INDIVIDUAL**, or an agent or affiliate of that individual.

7-305.

(a) In addition to any other right under law to cancel ~~[or rescind]~~ a contract, a homeowner has the right to[

(1) Rescind] ~~CANCEL~~ **RESCIND** a foreclosure consulting contract at any time[; and

(2) Rescind a foreclosure reconveyance at any time before midnight of the 3rd business day after any conveyance or transfer in any manner of legal or equitable title to a residence in foreclosure].

(b) ~~[Rescission] CANCELLATION~~ Rescission occurs when the homeowner gives written notice of ~~[rescission] CANCELLATION~~ rescission to the foreclosure consultant at the address specified in the contract or through any facsimile or electronic mail address identified in the contract or other materials provided to the homeowner by the foreclosure consultant.

(c) Notice of ~~[rescission] CANCELLATION~~ rescission, if given by mail, is effective when deposited in the United States mail, properly addressed, with postage prepaid.

(d) Notice of ~~[rescission] CANCELLATION~~ rescission need not be in the form provided with the contract and is effective, however expressed, if it indicates the intention of the homeowner to ~~[rescind] CANCEL~~ rescind the foreclosure consulting contract [or foreclosure reconveyance].

(e) [As part of] **AFTER** the ~~[rescission] CANCELLATION~~ rescission of a foreclosure consulting contract [or foreclosure reconveyance], the homeowner shall repay, within 60 days from the date of ~~[rescission] CANCELLATION~~ rescission, any funds paid or advanced by the foreclosure consultant or anyone working with the foreclosure consultant under the terms of the foreclosure consulting contract [or foreclosure reconveyance], together with interest calculated at the rate of 8% a year.

(f) The right to ~~[rescind] CANCEL~~ rescind may not be conditioned on the repayment of any funds.

7-306.

(a) A foreclosure consulting contract shall:

(1) Be provided to the homeowner for review before signing;

(2) Be printed in at least 12 point type and written in the same language that is used by the homeowner and was used in discussions with the foreclosure consultant to describe the consultant's services or to negotiate the contract;

(3) Fully disclose the exact nature of the foreclosure consulting services to be provided, including any [foreclosure reconveyance] **SALE OR TENANCY** that may be involved, and the total amount and terms of any compensation **FROM ANY SOURCE** to be received by the foreclosure consultant or anyone working in association with the consultant;

(4) **STATE THE DUTY OF THE FORECLOSURE CONSULTANT TO PROVIDE THE HOMEOWNER WITH WRITTEN COPIES OF ANY RESEARCH THE FORECLOSURE CONSULTANT HAS REGARDING THE VALUE OF THE HOMEOWNER'S RESIDENCE IN DEFAULT, INCLUDING ANY INFORMATION ON SALES OF COMPARABLE PROPERTIES OR ANY APPRAISALS;**

(5) Be dated and personally signed by the homeowner and the foreclosure consultant and be witnessed and acknowledged by a notary public appointed and commissioned by the State; and

[(5)] **(6)** Contain the following notice, which shall be printed in at least 14 point boldface type, completed with the name of the foreclosure consultant, and located in immediate proximity to the space reserved for the homeowner's signature:

“NOTICE REQUIRED BY MARYLAND LAW

..... (Name) or anyone working for him or her CANNOT ask you to sign or have you sign any lien, mortgage, or deed as part of signing this agreement unless the terms of the transfer are specified in this document and you are given a separate explanation of the precise nature of the transaction. **THE SEPARATE EXPLANATION MUST INCLUDE: HOW MUCH MONEY YOU MUST PAY; HOW MUCH MONEY YOU WILL RECEIVE, IF ANY; AND HOW MUCH MONEY THE FORECLOSURE CONSULTANT WILL RECEIVE FROM ANY SOURCE.**

..... (Name) or anyone working for him or her CANNOT guarantee you that they will be able to refinance your home or arrange for you to keep your home. Continue making mortgage payments until a refinancing, if applicable, is approved.

YOU HAVE THE RIGHT TO ~~CANCEL~~ RESCIND THIS FORECLOSURE CONSULTING CONTRACT AT ANY TIME BY INFORMING THE FORECLOSURE CONSULTANT THAT YOU WANT TO ~~CANCEL~~ RESCIND THE CONTRACT. SEE THE ATTACHED NOTICE OF ~~CANCELLATION~~ RESCISSION FORM FOR AN EXPLANATION OF THIS RIGHT. AFTER ANY ~~CANCELLATION~~ RESCISSION, YOU MUST REPAY, WITHIN 60 DAYS, ANY MONEY SPENT ON YOUR BEHALF AS A RESULT OF THIS AGREEMENT, ALONG WITH INTEREST CALCULATED AT THE RATE OF 8% A YEAR.

If a **CONTRACT TO SELL OR** transfer [of] the deed or title to your property is involved in any way, you may [~~rescind the transfer~~] ~~CANCEL~~ rescind **THAT CONTRACT AT** any time within [3] **5** days after the date you sign [the deed or other document of sale or transfer] **THAT CONTRACT AND YOU ARE INFORMED OF THIS RIGHT.** [See the attached Notice of Rescission form for an explanation of this right.] [As part of] **AFTER** any [~~rescission~~] ~~CANCELLATION~~ rescission, you must repay, within 60 days, any money spent on your behalf as a result of this agreement, along with interest calculated at the rate of 8% a year.

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY BEFORE SIGNING.”

(b) The contract shall contain on the first page, in at least 12 point type size:

(1) The name and address of the foreclosure consultant to which the notice of ~~cancellation~~ RESCISSION is to be mailed; and

(2) The date the homeowner signed the contract.

(c) (1) The contract shall be accompanied by a completed form in duplicate, captioned “NOTICE OF ~~[RESCISSION]~~ ~~CANCELLATION~~ RESCISSION”.

(2) The Notice of ~~[Rescission]~~ ~~CANCELLATION~~ Rescission shall:

(i) Be on a separate sheet of paper attached to the contract;

(ii) Be easily detachable; and

(iii) Contain the following statement printed in at least 15 point

type:

“NOTICE OF ~~[RESCISSION]~~ ~~CANCELLATION~~ RESCISSION

(Date of Contract)

You may ~~cancel~~ ~~[or rescind]~~ rescind this **FORECLOSURE CONSULTING** contract, without any penalty, at any time.

If you want to [end] ~~CANCEL~~ RESCIND this contract, mail or deliver a signed and dated copy of this Notice of ~~[Rescission]~~ ~~CANCELLATION~~ Rescission, or any other written notice indicating your intent to ~~[rescind]~~ ~~CANCEL~~ rescind to (name of foreclosure consultant) at (address of foreclosure consultant, including facsimile and electronic mail).

[As part of] **AFTER** any ~~[rescission]~~ ~~CANCELLATION~~ rescission, you (the homeowner) must repay any money spent on your behalf as a result of this agreement, within 60 days, along with interest calculated at the rate of 8% a year.

This is an important legal contract and could result in the loss of your home. Contact an attorney before signing.

NOTICE OF ~~[RESCISSION]~~ ~~CANCELLATION~~ RESCISSION

TO: (name of foreclosure consultant)

(address of foreclosure consultant, including facsimile and electronic mail)

I hereby ~~[rescind]~~ ~~CANCEL~~ rescind this contract.

..... (Date)

..... (Homeowner’s signature)”.

(d) The foreclosure consultant shall provide the homeowner with a signed and dated copy of the **FORECLOSURE CONSULTING** contract and the attached Notice of ~~[Rescission]~~ ~~CANCELLATION~~ Rescission immediately upon execution of the contract.

(e) The time during which the homeowner may ~~[rescind]~~ ~~CANCEL~~ rescind the **FORECLOSURE CONSULTING** contract does not begin to run until the foreclosure consultant has complied with this section.

(f) Any provision in a foreclosure consulting contract that attempts or purports to waive any of the rights specified in this title, consent to jurisdiction for litigation or choice of law in a state other than Maryland, consent to venue in a county other than the county in which the property is located, or impose any costs or filing fees greater than the fees required to file an action in a circuit court, is void.

7-307.

A foreclosure consultant may not:

(1) **ENGAGE IN, ARRANGE, OFFER, PROMOTE, PROMISE, SOLICIT, PARTICIPATE IN, ASSIST WITH, OR CARRY OUT A FORECLOSURE RESCUE TRANSACTION;**

(2) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform;

[(2)] (3) Claim, demand, charge, collect, or receive any interest or any other compensation for any loan that the foreclosure consultant makes to the homeowner that exceeds 8% a year;

[(3)] (4) Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation;

[(4)] (5) Receive any consideration from any third party in connection with foreclosure consulting services provided to a homeowner unless the consideration:

(I) [is] **IS** first fully disclosed in writing to the homeowner;

(II) **IS CLEARLY LISTED ON ANY SETTLEMENT DOCUMENTS;**

AND

(III) IS NOT IN VIOLATION OF ANY PROVISION OF THIS SUBTITLE;

(6) RECEIVE A COMMISSION, REGARDLESS OF HOW DESCRIBED, FOR THE SALE OF A RESIDENCE IN DEFAULT THAT EXCEEDS 8% OF THE SALES PRICE;

(7) RECEIVE ANY MONEY TO BE HELD IN ESCROW OR ON A CONTINGENT BASIS ON BEHALF OF THE HOMEOWNER;

[(5)] (8) Acquire any interest, directly or indirectly, or by means of a subsidiary, affiliate, or corporation in which the foreclosure consultant or a member of the foreclosure consultant's immediate family is a primary stockholder, in a residence in [foreclosure] **DEFAULT** from a homeowner with whom the foreclosure consultant has contracted;

[(6)] (9) Take any power of attorney from a homeowner for any purpose, except to inspect documents as provided by law; or

[(7)] (10) Induce or attempt to induce any homeowner to enter into a foreclosure consulting contract that does not comply in all respects with this subtitle.

7-308.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "LICENSE" HAS THE MEANING STATED IN § 17-101(G) OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.

(3) "PROVIDE REAL ESTATE BROKERAGE SERVICES" HAS THE MEANING STATED IN § 17-101(L) OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.

(B) A FORECLOSURE CONSULTANT WHO PROVIDES REAL ESTATE BROKERAGE SERVICES SHALL BE LICENSED AS REQUIRED UNDER TITLE 17 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.

(C) A FORECLOSURE CONSULTANT SHALL PRESENT A COPY OF THE LICENSE TO A HOMEOWNER NO LATER THAN THE TIME A FORECLOSURE CONSULTING CONTRACT IS EXECUTED.

7-309.

(A) A FORECLOSURE CONSULTANT HAS A DUTY TO PROVIDE THE HOMEOWNER WITH WRITTEN COPIES OF ANY RESEARCH THE FORECLOSURE CONSULTANT HAS REGARDING THE VALUE OF THE HOMEOWNER'S RESIDENCE IN DEFAULT, INCLUDING ANY INFORMATION ON SALES OF COMPARABLE PROPERTIES OR ANY APPRAISALS.

(B) A FORECLOSURE CONSULTANT OWES THE SAME DUTY OF CARE TO A HOMEOWNER AS A LICENSED REAL ESTATE BROKER OWES TO A CLIENT UNDER § 17-532 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.

Part III. [Foreclosure Purchases] **SALES OR TRANSFERS OF RESIDENCES IN DEFAULT.**

7-310.

(A) IN ADDITION TO ANY OTHER RIGHT UNDER LAW TO CANCEL RESCIND A CONTRACT, IF A CONTRACT FOR THE SALE OR TRANSFER OF A RESIDENCE IN DEFAULT IS INCLUDED IN A FORECLOSURE CONSULTING CONTRACT OR ARRANGED BY A FORECLOSURE CONSULTANT, THE HOMEOWNER OF THE A RESIDENCE IN DEFAULT HAS THE RIGHT TO CANCEL RESCIND THE A CONTRACT FOR THE SALE OR TRANSFER OF THE RESIDENCE IN DEFAULT WITHIN 5 DAYS AFTER THE EXECUTION OF THE CONTRACT.

(B) ANY PROVISION IN A CONTRACT OR OTHER AGREEMENT CONCERNING A SALE OR TRANSFER OF A RESIDENCE IN DEFAULT THAT ATTEMPTS OR PURPORTS TO WAIVE THE HOMEOWNER'S RIGHTS UNDER THIS TITLE, CONSENT TO JURISDICTION FOR LITIGATION OR CHOICE OF LAW IN A STATE OTHER THAN MARYLAND, CONSENT TO VENUE IN A COUNTY OTHER THAN THE COUNTY IN WHICH THE PROPERTY IS LOCATED, OR IMPOSE ANY COSTS OR FILING FEES GREATER THAN THE FEES REQUIRED TO FILE AN ACTION IN A CIRCUIT COURT, IS VOID.

(C) EXCEPT WHEN A PRIMARY MORTGAGE LENDER TAKES A DEED IN LIEU OF FORECLOSURE, A SALE OR TRANSFER OF A RESIDENCE IN DEFAULT MAY NOT BE EXECUTED USING A QUITCLAIM DEED.

(D) A NOTICE OF RESCISSION UNDER THIS SECTION:

(1) SHALL BE IN WRITING BUT NEED NOT TAKE ANY PARTICULAR FORM SPECIFIED IN THIS SUBTITLE OR ANY FORM CONTAINED IN ANY AGREEMENT WITH THE PURCHASER OR TRANSFEREE; AND

(2) IS EFFECTIVE, HOWEVER EXPRESSED, IF IT INDICATES THE INTENTION OF THE HOMEOWNER TO RESCIND THE CONTRACT.

(E) THE RIGHT TO RESCIND MAY NOT BE CONDITIONED ON THE REPAYMENT OF ANY FUNDS, PROVIDED HOWEVER THAT ANY DEBT EXISTING PRIOR TO A RESCISSION SHALL CONTINUE TO EXIST.

(F) WITHIN 10 DAYS AFTER RECEIPT OF A NOTICE OF RESCISSION, THE PURCHASER OR TRANSFEREE SHALL RETURN, WITHOUT CONDITION, ANY ORIGINAL DEED, TITLE, CONTRACT, AND ANY OTHER DOCUMENT SIGNED BY THE HOMEOWNER.

(G) DURING THE 5-DAY RESCISSION PERIOD, A DEED OR OTHER DOCUMENT AFFECTING TITLE TO THE HOMEOWNER'S RESIDENCE IN DEFAULT MAY NOT BE RECORDED.

[7-310.] **7-311.**

(A) THIS SECTION APPLIES TO A CONTRACT FOR THE SALE OR TRANSFER OF A RESIDENCE IN DEFAULT THAT IS INCLUDED IN A FORECLOSURE CONSULTING CONTRACT OR ARRANGED BY A FORECLOSURE CONSULTANT.

[(a)] **(B)** [If a foreclosure reconveyance is included in a foreclosure consulting contract or arranged after the execution of a foreclosure consulting contract, the foreclosure] **IN ADDITION TO ANY OTHER REQUIREMENT UNDER LAW, THE purchaser OF A RESIDENCE IN DEFAULT shall provide the homeowner with a document entitled "Notice [of Transfer of Deed or Title] TO HOMEOWNER".**

[(b)] **(C)** The document entitled "Notice [of Transfer of Deed or Title] TO HOMEOWNER" shall:

(1) Contain the [entire agreement of the parties] **TOTAL SALES PRICE OF THE RESIDENCE IN DEFAULT AND AN EXPLANATION OF THE DISTRIBUTION OF THE PROCEEDS OF THE SALE, INCLUDING ANY PAYMENTS TO ANY PARTIES, INCLUDING THE FORECLOSURE CONSULTANT;**

(2) Be printed in 12 point type and written in the same language that is used by the homeowner and was used in discussions to describe the foreclosure consultant's or [foreclosure] purchaser's services or to negotiate the transfer or sale of the property;

(3) Be dated and personally signed by the homeowner and the [foreclosure] purchaser and witnessed and acknowledged by a notary public appointed and commissioned by the State;

(4) Describe in detail the terms of any [foreclosure conveyance] **SALE OR TRANSFER** including:

(i) The name, business address, telephone number, and facsimile number of the person to whom the deed or title will be **SOLD OR** transferred;

(ii) The address of the residence in [foreclosure] **DEFAULT**;

(iii) The total consideration to be given **OR RECEIVED, DIRECTLY OR INDIRECTLY**, by the [foreclosure] **HOMEOWNER**, purchaser, **AND** the foreclosure consultant[, and any other party as a result of the transfer];

(iv) The time at which title is to be **SOLD OR** transferred to the [foreclosure] purchaser [and the terms of any conveyance]; **AND**

(v) Any financial or legal obligations [that] **TO WHICH** the homeowner may remain subject [to, including a description of any mortgages, liens, or other obligations that will remain in place;

(vi) A description of any services of any nature that the foreclosure purchaser will perform for the homeowner before or after the sale or transfer;

(vii) A complete description of the terms of any related agreement designed to allow the homeowner to remain in the home, including the terms of any rental agreement, repurchase agreement, contract for deed, land installment contract, or option to buy, and any provisions for eviction or removal of the homeowner in the case of late payment; and

(viii) How any repurchase price or fee associated with any transfer of title or deed back to the homeowner will be calculated.]; **AND**

(5) Contain the following statement printed in at least 14 point boldface type and located in immediate proximity to the space reserved for the homeowner's signature:

"If you change your mind about **SELLING OR** transferring ownership of your property, you, the homeowner, may ~~rescind~~ ~~CANCEL~~ rescind the **CONTRACT FOR THE SALE OR** transfer of the deed or title to your property any time within the next [3] **5** days. **SEE THE ATTACHED NOTICE OF RIGHT TO CANCEL RESCIND CONTRACT FOR THE SALE OR TRANSFER OF DEED OR TITLE.** [As part of] **AFTER** any ~~rescission~~ ~~CANCELLATION~~ rescission, you must repay, within 60 days, any money spent on your behalf as a result of this agreement, along with interest calculated at the rate of 8% a year.

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY BEFORE SIGNING.”.

[(c)] **(D)** (1) [If a foreclosure reconveyance is included in a foreclosure consulting contract or arranged after the execution of a foreclosure consulting contract, the foreclosure] **THE** purchaser shall provide the homeowner with a document entitled “NOTICE OF RIGHT TO ~~CANCEL~~ **RESCIND CONTRACT FOR THE SALE OR TRANSFER OF DEED OR TITLE**”.

(2) The **DOCUMENT ENTITLED “NOTICE OF RIGHT TO ~~CANCEL~~ RESCIND CONTRACT FOR THE SALE OR TRANSFER OF DEED OR TITLE”** shall:

(i) Be a separate document and not printed on the back of any other document; and

(ii) Contain the following statement printed in at least 14 point type:

“NOTICE OF RIGHT TO ~~CANCEL~~ **RESCIND CONTRACT FOR THE SALE OR TRANSFER OF DEED OR TITLE**”

(Date)

You may ~~cancel~~ ~~for rescind~~ rescind the **CONTRACT FOR THE SALE OR TRANSFER OF OWNERSHIP OF YOUR PROPERTY** [through the transfer of a deed or title] within [3] **5** business days after the date you sign this document **AND ARE NOTIFIED OF THIS RIGHT.**

To ~~rescind~~ ~~CANCEL~~ rescind this [transaction] **CONTRACT**, mail or deliver a signed and dated copy of this Notice, or any other written notice expressing a similar intent to (name of [foreclosure consultant] **PURCHASER**) at (address of [foreclosure consultant] **PURCHASER**, including facsimile and electronic mail).

[As part of] **AFTER** any ~~rescission~~ ~~CANCELLATION~~ rescission, you (the homeowner) must repay any money spent on your behalf as a result of this agreement, within 60 days, along with interest calculated at the rate of 8% a year.

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY BEFORE SIGNING.

NOTICE OF ~~[RESCISSION] CANCELLATION~~ RESCISSIONTO: (name of [foreclosure consultant] **PURCHASER**)(address of [foreclosure consultant] **PURCHASER**, including facsimile and electronic mail)

I hereby ~~[rescind] CANCEL~~ rescind the **CONTRACT FOR THE SALE OR** transfer of deed or title to my property. Please return all executed documents to me.

..... (Date)

..... (Homeowner's signature)".

[(d)] **(E)** The [foreclosure] purchaser shall provide the homeowner with a copy of the Notice of Right to ~~Cancel~~ RESCIND CONTRACT FOR THE SALE OR Transfer of Deed or Title immediately on execution of any document that includes [a foreclosure reconveyance] **AN AGREEMENT TO SELL OR TRANSFER.**

[(e)] **(F)** The time during which the homeowner may ~~[rescind] CANCEL~~ rescind the contract **FOR THE SALE** or transfer does not begin to run until the [foreclosure] purchaser has complied with this [section] **PART.**

~~[(f)] **(G)** Any provision in a [foreclosure consulting] contract or other agreement concerning a [foreclosure reconveyance] **SALE OR TRANSFER OF A RESIDENCE ON DEFAULT** that attempts or purports to waive the homeowner's rights under this [section] **TITLE**, consent to jurisdiction for litigation or choice of law in a state other than Maryland, consent to venue in a county other than the county in which the property is located, or impose any costs or filing fees greater than the fees required to file an action in a circuit court, is void.~~

~~[(g)] **(H)** A [foreclosure reconveyance] **SALE OR TRANSFER OF A RESIDENCE IN DEFAULT** may not be carried out using:~~

~~(1) [a] A power of attorney from the homeowner; OR~~

~~(2) A QUIT CLAIM DEED.~~

~~[(h)] **(I)** A notice of [rescission] **CANCELLATION** need not take the particular form specified in this [subtitle] **SECTION** or any form contained in any agreement with the [foreclosure consultant or foreclosure] purchaser and is effective,~~

~~however expressed, if it indicates the intention of the homeowner to [repeal] CANCEL the [reconveyance agreement] CONTRACT.~~

~~[(i)] (J) The right to [repeal] CANCEL may not be conditioned on the repayment of any funds.~~

~~[(j)] (K) Within 10 days after receipt of a notice of [repeal] CANCELLATION given in accordance with this [subtitle] SECTION, the [foreclosure] purchaser shall return, without condition, any original deed, title, contract, and any other document signed by the homeowner.~~

~~[(k)] (L) During the [3 day] 5-DAY [repeal] CANCELLATION period, a deed or other document affecting title to the homeowner's residence IN DEFAULT may not be recorded.~~

[7-311.] **7-312.**

[(a)] (1) In this section the following words have the meanings indicated.

(2) "Primary housing expenses" means the total amount required to pay regular principal, interest, rent, utilities, hazard insurance, real estate taxes, and association dues on a property.

(3) "Resale" means a bona fide market sale of property subject to a foreclosure reconveyance by the foreclosure purchaser to an unaffiliated third party.

(4) "Resale price" means the gross sale price of a property on resale.

(5) "Settlement" means an in-person, face-to-face meeting with the homeowner to complete final documents incident to the sale or transfer of real property, or the creation of a mortgage or equitable interest in real property, conducted by a settlement agent who is not employed by or an affiliate of the foreclosure purchaser, during which the homeowner must be presented with a completed copy of the HUD-1 Settlement Form.

[(b)] A [foreclosure] purchaser **OF A RESIDENCE IN DEFAULT** may not:

(1) [Enter into, or attempt to enter into, a foreclosure reconveyance with a homeowner unless:

(i) The foreclosure purchaser verifies and can demonstrate that the homeowner has or will have a reasonable ability to pay for the subsequent reconveyance of the property back to the homeowner on completion of the terms of a foreclosure conveyance, or, if the foreclosure conveyance provides for a lease with an option to repurchase the property, the homeowner has or will have a reasonable ability

to make the lease payments and repurchase the property within the term of the option to repurchase;

(ii) The foreclosure purchaser and the homeowner complete a formal settlement before any transfer of an interest in the property is effected; and

(iii) The foreclosure] ~~COMPLETE A SALE OR TRANSFER OF THE RESIDENCE IN DEFAULT UNTIL THE~~ purchaser complies with the requirements of the federal Home Ownership Equity Protection Act, 15 U.S.C. 1639, and its implementing regulations [for any foreclosure reconveyance in which the homeowner obtains a vendee interest in a contract for deed];

(2) [Fail to:

(i) Ensure that title to the property has been reconveyed to the homeowner in a timely manner if this subtitle or the terms of a foreclosure reconveyance agreement require a reconveyance; or

(ii) Make payment to the homeowner within 90 days of any resale of the property so that the homeowner receives cash payments or consideration in an amount equal to at least 82% of the net proceeds from any resale of the property should a property subject to a foreclosure reconveyance be sold within 18 months after entering into a foreclosure reconveyance agreement;

(3) Enter into repurchase or lease terms as part of the foreclosure conveyance that are unfair or commercially unreasonable, or engage in any other unfair conduct;

(4)] Represent, directly or indirectly, that:

(i) The [foreclosure] purchaser is acting as an advisor or a consultant, or in any other manner represent that the [foreclosure] purchaser is acting on behalf of the homeowner;

(ii) The [foreclosure] purchaser has certification or licensure that the [foreclosure] purchaser does not have;

(iii) The [foreclosure] purchaser is assisting the homeowner to “save the house” or use a substantially similar phrase; or

(iv) The [foreclosure] purchaser is assisting the homeowner in preventing a foreclosure if the result of the transaction is that the homeowner will [not complete a redemption of the property] **NO LONGER OWN THE PROPERTY;**

[(5)] ~~(3)~~ **(2)** Make any other statements, directly or by implication, or engage in any other conduct that is false, deceptive, or misleading, or that has the likelihood to cause confusion or misunderstanding, including statements regarding the value of the residence in [foreclosure] **DEFAULT**, the amount of proceeds the homeowner will receive after a [foreclosure] sale **OR TRANSFER**, any contract term, or the homeowner's rights or obligations incident to or arising out of the [foreclosure reconveyance] **SALE OR TRANSFER**; or

[(6)] ~~(4)~~ **(3)** Until the homeowner's right to ~~rescind or cancel~~ rescind the transaction has expired:

(i) Record any document, including an instrument of conveyance, signed by the homeowner; or

(ii) Transfer or encumber or purport to transfer or encumber any interest in the residence in [foreclosure] **DEFAULT** to any third party.

[(c) For purposes of subsection (b)(1) of this section, there is a rebuttable presumption that:

(1) A homeowner has a reasonable ability to pay for a subsequent reconveyance of the property if the homeowner's payments for primary housing expenses and regular principal and interest payments on other personal debt, on a monthly basis, do not exceed 60% of the homeowner's monthly gross income; and

(2) The foreclosure purchaser has not verified reasonable payment ability if the foreclosure purchaser has not obtained documents other than a statement by the homeowner of assets, liabilities, and income.

(d) (1) The foreclosure purchaser shall make a detailed accounting of the basis for the amount of a payment made to the homeowner of a property resold within 18 months after entering into a foreclosure reconveyance agreement, in accordance with (b)(2)(ii) of this section.

(2) The accounting shall be on a form prescribed by the Attorney General in consultation with the Commissioner of Financial Regulation and shall include detailed documentation of expenses and other consideration paid by the foreclosure purchaser and deducted from the resale price.

(e) A bona fide purchaser for value or bona fide lender for value who enters into a transaction with a homeowner or a foreclosure purchaser when a foreclosure consulting contract is in effect or during the period when a foreclosure reconveyance may be rescinded, without notice of those facts, receives good title to the property, free and clear of the right of the parties to the foreclosure consulting contract or the right of the homeowner to rescind the foreclosure reconveyance.

(f) This subtitle may not be construed to impose any duty on a purchaser, title insurer, or title insurance producer with respect to the application of the proceeds of a sale of property by a foreclosure purchaser.]

7-313.

(A) (1) IF A TENANCY AGREEMENT IS INCLUDED IN A CONTRACT FOR THE SALE OR TRANSFER OF A RESIDENCE IN DEFAULT, THE PURCHASER SHALL PROVIDE THE HOMEOWNER WITH A DOCUMENT ENTITLED "STATEMENT ABOUT TENANCY" AT THE TIME THE CONTRACT IS EXECUTED.

(2) THE DOCUMENT ENTITLED "STATEMENT ABOUT TENANCY" SHALL:

(I) BE ON A SEPARATE SHEET OF PAPER ATTACHED TO THE CONTRACT FOR THE SALE OR TRANSFER OF A RESIDENCE IN DEFAULT;

(II) BE DATED AND PERSONALLY SIGNED BY THE HOMEOWNER AND THE PURCHASER AND BE WITNESSED AND ACKNOWLEDGED BY A NOTARY PUBLIC APPOINTED AND COMMISSIONED BY THE STATE;

(III) CONTAIN A STATEMENT INFORMING THE HOMEOWNER OF THE HOMEOWNER'S RIGHT TO A COPY OF A SIGNED LEASE; AND

(IV) CONTAIN THE FOLLOWING STATEMENT PRINTED IN AT LEAST 15 POINT TYPE:

"STATEMENT ABOUT TENANCY

(DATE OF CONTRACT)

I AGREE TO SELL MY HOME. I UNDERSTAND THAT I WILL NO LONGER HAVE AN OWNERSHIP INTEREST IN OR ANY OTHER RIGHT TO OWN THIS PROPERTY. EVEN THOUGH I MAY BE ABLE TO LIVE ON THE PREMISES AS A TENANT, I WILL HAVE NO RIGHT TO REPURCHASE THIS PROPERTY OR TO OBTAIN ANY OTHER KIND OF OWNERSHIP INTEREST. IF I DO NOT PAY THE RENT AS AGREED, I MAY BE SUBJECT TO EVICTION. AS A TENANT, I AM ENTITLED TO RECEIVE A WRITTEN LEASE FROM THE NEW OWNER OF THE PROPERTY."

(B) THE PURCHASER SHALL PROVIDE THE HOMEOWNER WITH A SIGNED AND DATED COPY OF THE DOCUMENT ENTITLED "STATEMENT ABOUT TENANCY" IMMEDIATELY UPON EXECUTION OF THE CONTRACT FOR THE SALE OR TRANSFER OF THE RESIDENCE IN DEFAULT.

(C) THE TIME DURING WHICH THE HOMEOWNER MAY ~~CANCEL~~ RESCIND THE CONTRACT FOR THE SALE OR TRANSFER OF A RESIDENCE IN DEFAULT UNDER § 7-310 OF THIS SUBTITLE DOES NOT BEGIN TO RUN UNTIL THE PURCHASER HAS COMPLIED WITH THIS SECTION.

7-314.

(a) Each foreclosure surplus acquisition shall be in the form of a written contract.

(b) Each foreclosure surplus acquisition contract shall:

(1) Contain the entire agreement of the parties;

(2) Be printed in at least 12 point type, in the same language that is used by the homeowner and was used by the foreclosure surplus purchaser and the homeowner to negotiate the sale of the residence in foreclosure;

(3) Be fully completed, dated, and personally signed by the homeowner and the foreclosure surplus purchaser before the statement of account has been referred to the auditor; and

(4) Include:

(i) The name, business address, and telephone number of the foreclosure surplus purchaser;

(ii) The address of the residence in foreclosure;

(iii) The total consideration to be given by the foreclosure surplus purchaser in connection with or incident to the transaction;

(iv) A complete description of the terms of payment or other consideration, including any services of any nature that the foreclosure surplus purchaser represents the foreclosure surplus purchaser will perform for the homeowner before or after the sale; and

(v) The following notice, which shall be printed in at least 14 point boldface type, completed with the name of the foreclosure surplus purchaser, and located in immediate proximity to the space reserved for the homeowner's signature:

“NOTICE REQUIRED BY MARYLAND LAW

If you have any questions about this document, seek legal counsel before signing. This is an important legal contract. Failure to read and understand these documents may cause you to lose valuable rights.

The effect of these documents is that you may lose the equity in your home. This agreement will not stop the foreclosure or get your house back. If you believe the foreclosure sale was improper, you should immediately seek legal advice to determine what objections to ratification or to ~~rescind~~ ~~CANCEL~~ rescind the order of ratification may be filed.

You may ~~rescind~~ ~~CANCEL~~ rescind this contract for the sale of your house without any penalty or obligation at any time within 10 days after the auditor states the account of the foreclosure sale. See the attached Notice of ~~Rescission~~ ~~CANCELLATION~~ Rescission form for an explanation of this right. [As part of] **AFTER** the ~~rescission~~ ~~CANCELLATION~~ rescission, you must repay from the surplus proceeds any consideration received, directly or indirectly, together with an amount for interest calculated at the rate of 8% a year.”

(c) (1) The contract shall be accompanied by a completed form in duplicate, captioned “Notice of ~~Rescission~~ ~~CANCELLATION~~ Rescission”.

(2) The Notice of ~~Rescission~~ ~~CANCELLATION~~ Rescission shall:

- (i) Be on a separate sheet of paper attached to the contract;
- (ii) Be easily detachable; and
- (iii) Contain the following statement printed in at least 15 point

type:

“NOTICE OF ~~RESCISSON~~ ~~CANCELLATION~~ RESCISSON

..... (Date of contract)

You may ~~rescind~~ ~~CANCEL~~ rescind this contract for the sale of your house at any time within 10 days after the auditor states the account of the foreclosure sale.

To ~~cancel~~ **RESCIND** this transaction, mail or deliver a signed and dated copy of this Notice of ~~Rescission~~ ~~CANCELLATION~~ Rescission to (Name of purchaser) at (Address of purchaser, including facsimile and electronic mail) with a copy to the court appointed auditor.

I hereby ~~rescind~~ ~~CANCEL~~ rescind this transaction.

..... (Date)

..... (Homeowner’s signature)”.

(d) The foreclosure surplus purchaser shall provide the homeowner with a copy of the contract and the attached Notice of ~~[Rescission]~~ ~~CANCELLATION~~ Rescission at the time the contract is executed by all parties.

(e) The contract required by this section survives delivery of any instrument of conveyance of the residence in foreclosure, is binding in the audit, and has no effect on persons other than the parties to the contract.

(f) Any provision in a contract that attempts or purports to waive any of the rights specified in this title, consent to jurisdiction or choice of law in a state other than Maryland, consent to venue in a county other than the county in which the property is located, or impose any costs or filing fees greater than the fees required to file an action in a circuit court, is void.

7-315.

(a) In addition to any other right ~~[of rescission]~~ ~~TO CANCEL~~, a homeowner has the right to ~~[rescind]~~ ~~CANCEL~~ rescind any contract with a foreclosure surplus purchaser at any time within 10 days after the statement of audit account of the foreclosure sale.

(b) (1) ~~[Rescission]~~ ~~CANCELLATION~~ Rescission occurs when the homeowner delivers, by any means, written Notice of ~~[Rescission]~~ ~~CANCELLATION~~ Rescission to the address specified in the contract, with a copy to the auditor. As part of the ~~[rescission]~~ ~~CANCELLATION~~ rescission, the homeowner shall repay any consideration received directly or indirectly, together with interest calculated at the rate of 8% a year.

(2) On receipt of the Notice of ~~[Rescission]~~ ~~CANCELLATION~~ Rescission, the auditor shall restate the account. The repayment of consideration and interest by the homeowner shall be incorporated by the auditor into the revised statement of account filed with the court.

(3) Upon ratification of the amended audit, the attorney named in the mortgage, mortgage assignee for purposes of foreclosure, trustee, or substitute trustee in making distribution of the surplus funds shall comply with the revised court-approved audit.

(c) A Notice of ~~[Rescission]~~ ~~CANCELLATION~~ Rescission given by a homeowner need not be in the form provided with the contract and is effective, however expressed, if it indicates the intention of the homeowner to ~~[rescind]~~ ~~CANCEL~~ rescind the contract.

(d) The right to ~~rescind~~ ~~CANCEL~~ rescind may not be conditioned on the repayment of any funds.

(e) Within 10 days after receipt of a Notice of ~~Rescission~~ ~~CANCELLATION~~ Rescission given in accordance with this section, the foreclosure surplus purchaser shall return, without condition, the original contract and all other documents signed by the homeowner.

7-318.

(a) A person may not induce or attempt to induce a homeowner to waive the homeowner's rights under this subtitle.

(b) Any waiver by a homeowner of the provisions of this subtitle is void and unenforceable as contrary to public policy.

7-318.1.

IT IS A VIOLATION OF THIS SUBTITLE IF A FORECLOSURE CONSULTANT:

(1) FAILS TO OBTAIN A REAL ESTATE BROKER'S LICENSE AS REQUIRED UNDER § 7- 308 OF THIS SUBTITLE; OR

(2) VIOLATES ANY PROVISION OF TITLE 17 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.

7-319.

(a) The Attorney General **OR THE COMMISSIONER** may seek an injunction to prohibit a person who has engaged or is engaging in a violation of this subtitle from engaging or continuing to engage in the violation.

(b) The court may enter any order or judgment necessary to:

(1) Prevent the use by a person of any prohibited practice;

(2) Restore to a person any money or real or personal property acquired from the person by means of any prohibited practice; or

(3) Appoint a receiver in case of willful violation of this title.

(c) In any action brought by the Attorney General **OR THE COMMISSIONER** under this section, the Attorney General **OR THE COMMISSIONER** is entitled to recover the costs of the action for the use of the State.

(D) A VIOLATION OF THIS SUBTITLE IS AN UNFAIR OR DECEPTIVE TRADE PRACTICE WITHIN THE MEANING OF TITLE 13 OF THE COMMERCIAL LAW ARTICLE AND IS SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS CONTAINED IN TITLE 13 OF THE COMMERCIAL LAW ARTICLE.

7-320.

(a) In addition to any action by the Attorney General **OR THE COMMISSIONER** authorized under this subtitle and any other action otherwise authorized by law, a homeowner may bring an action for damages incurred as the result of a practice prohibited by this subtitle.

(b) A homeowner who brings an action under this section and who is awarded damages may also seek, and the court may award, reasonable attorney's fees.

(c) If the court finds that the defendant willfully or knowingly violated this subtitle, the court may award damages equal to three times the amount of actual damages.

7-321.

(a) A person who violates any provision of this subtitle is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$10,000 or both.

(b) A person who violates this subtitle is subject to § 5-106(b) of the Courts Article.

7-322.

(A) IF A CRIMINAL PROSECUTION UNDER THIS SUBTITLE RESULTS IN A CONVICTION, THE ATTORNEY GENERAL OR THE STATE'S ATTORNEY WHO HAS PROSECUTED THE CASE SHALL NOTIFY THE COMMISSIONER IN WRITING OF THE CONVICTION WITHIN 30 DAYS OF THE CONVICTION.

(B) THE NOTICE REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL INCLUDE:

- (1) THE NAME AND ADDRESS OF THE PERSON CONVICTED; AND**
- (2) A COPY OF THE JUDGMENT IN THE CRIMINAL CASE.**

7-323. RESERVED.

7-324. RESERVED.

PART VI. SHORT TITLE.

7-325.

THIS SUBTITLE MAY BE CITED AS THE “PROTECTION OF HOMEOWNERS IN FORECLOSURE ACT”.

~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2008.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a ye and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

Approved by the Governor, April 3, 2008.